IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

Bail Appl..No. 7110 of 2007()

CRIME NO.345/07 OF PUNNAPRA POLICE STATION

: PETITIONERS

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1. K.RAVEENDRAN, S/O KRISHNAN,
   KATTUNKAL HOUSE, VANDANAM P.O.,
   ALAPPUZHA-5.

2. C.N.PRABHAKARAN, S/O NANU,
   PREM NIVAS, VANDANAM P.O., ALAPPUZHA-5.

BY ADV. SRI.P.S.KRISHNA PILLAI

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE
   DIRECTOR OF PROSECUTIONS, HIGH COURT OF KERALA,
   ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE,
   PUNNAPRA POLICE STATION, PUNNAPRA P.O.,
   ALAPPUZHA-5.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 26/11/2007 ALONG WITH B.A.NO.7120 & 7147 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.Nos.7110, 7120 & 7147 of 2007

Dated this the 26th day of November, 2007

ORDER

These applications are for anticipatory bail. Against the petitioners, 3 crimes have been registered. 2 of them have been registered on the basis of private complaints filed before the Magistrate and referred to the police by the learned Magistrate under Section 156(3) Cr.P.C. The 3rd has been filed by 18 persons before the superior official of the police and the same has been referred to the local police to register a crime and investigate. The petitioners are office bearers/employees of the S.N.D.P branch. The crux of the allegations is that the petitioners were induced to part with money which the branch accepted as deposits. The petitioners have not been returned amounts. The petitioners realised that they have been deceived. Accordingly the complaints have been filed. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. At worst it is only a civil dispute regarding returning of amounts between the S.N.D.P branch and the complainants. There are no elements of the culpable offence of cheating at all. In fact, civil claims have been filed before the civil

courts by the depositors claiming return of amounts from the S.N.D.P branch. In any view of the matters, the petitioners, who are only officer bearers/employees of the branch, do not deserve to suffer the trauma of arrest and detention. The petitioners may, in these circumstances, be granted anticipatory bail, submits the learned counsel for the petitioners.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the unauthorised and illegal activity of collection of deposits etc. has been indulged in by the officer bearers/employees of the branches in the name of branch. They do not have any legal authority to indulge in such activities. Gullible subscribers have been induced to believe that a legal and legitimate activity is being conducted and they have been taken for a ride. Amounts have not been returned. The branch or the office bearers do not have any legal authority to conduct such business. In these circumstances, allegations raised against the petitioners are acceptable and sustainable. In any view of the matter, the petitioners do not deserve invocation of the extraordinary equitable discretion under Section 438 Cr.P.C in their favour. They may be directed to surrender before the learned Magistrate and seek regular bail in the ordinary course, submits the learned Public Prosecutor .

4. The learned counsel for the petitioners points out that this Court had by Annexure-G order produced in B.A.No.7120 of 2007 issued directions under Section 438 Cr.P.C in favour of the very same petitioners. That obviously was a case where cognizance was taken by the learned Magistrate on a complaint filed by one of the depositors and instead of issuing summons against the accused persons, the learned Magistrate has issued non bailable warrants at the first instance. In that situation this Court had permitted the petitioners to surrender before the learned Magistrate and seek regular bail.

5. Having considered all the relevant inputs, I must say that I am not persuaded to invoke the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioners must co-operate with the investigators. They must appear before the Investigating Officer or the learned Magistrate and then seek regular bail in the normal and ordinary course. I am unable to perceive any features in this case that can justify issue of direction under Section 438 Cr.P.C.

6. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioners surrender before the Investigating Officer or the learned Magistrate and apply for bail after

giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-